IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 169 of 1988
with
FIRST APPEAL No 170 of 1988
with
FIRST APPEAL NO 171 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEPUTY COLLECTOR

Versus

NACHHABHAI CHHAGANBHAI PATEL

Appearance:

1. First Appeal No. 169 of 1988
MR SIRAJ GORI AGP for Appellant No.
NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 27/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Land Reference Case Nos.40 and 41 of 1985 filed by the respondents-claimants-owners of Shinavad village were disposed of by the reference court by its impugned common judgment and award dated 28.8.1987 whereby the reference court has awarded compensation of Rs.500/= per Are. instead of Rs.60/= per Are. awarded by the Land Acquisition Officer. First Appeal No.169 of 1984 is filed in Land Reference Case No.41 of 1985, whereas, First Appeal No.170 of 1986 is filed in Reference Case No.40 of 1985.

2. There was another land Reference Case Nos.42 of 1985 filed by the respondent-claimant-owner of the land of Village Kuna wherein also reference court awarded Rs.500/= per Are. The said village Kuna is in fact situated within the revenue limits of village Sayra. Relying on the sale instance of the lands of Village Sayra, the reference court awarded Rs.500/- per Are. Whereas, in Land Reference Cases Nos.40 and 41 of 1985, the lands of village Shinavad are adjacent to village Sayra, therefore, reference court has awarded Rs.500/= per Are. on the basis of the sale instance. Therefore, though the reference court passed two judgments and awards, all these matters are disposed of by this common order.

3. Learned AGP, Mr.Gori for the appellant vehemently submitted that the reference court committed grave error in relying upon the sale instance Ex.26 produced by the claimants for awarding compensation of Rs.500/= per Are. He submitted that the said sale instances were of village Sayra, whereas, the lands of the respondents-claimants were situated in Shinavad. Thus, therefore, such sale instances could not have been relied upon by the reference court. He submitted that if there is any sale instance of Shinavad and it was relied upon by the reference court, then no grievance could have been made. But in the instant case, the reference court has wrongly relied upon the sale instance of another village. This submission has no force. It is clear from the evidence on record of the case as well as finding recorded by the reference court that on the Eastern Side of village Shinavad, there is Sayra village, which is adjoining to it and there is no much distance between those two villages. In that view of the matter, if the reference court has relied upon the sale instances of village Sayra

then in that case it cannot be said that the reference court has committed an error. It may be stated that lands of both the villages Sayra and Shinavad were acquired for the purpose of Majum Irrigation Scheme. In the instant case, notification under Section 4 of the Land Acquisition Act was issued way back on 9.5.1983 and it is clear from the judgment of the reference court that the basis of the acquired land was taken before the date of notification under Section 4 of the Act in 1983.

4. In view of the above, it is clear that Land Acquisition Officer has awarded meagre amount of Rs.60/= per Are. to the claimants, therefore, in our considered opinion, the reference court has rightly awarded Rs.500/= per Are. to the respondents-claimants. Having carefully gone through the reasons assigned by the reference court in its judgment, we do not see any reason to interfere with the same in these two appeals i.e First Appeal Nos.169 and 170 of 1988. Accordingly, both the appeals are dismissed. However, there shall be no order as to costs as no one appears for the respondents though served.

5. This brings us to First Appeal No.171 of 1988. From the evidence on record and the judgment of the learned Judge it is clear that the lands of village Kuna were acquired and the same were part and parcel of village Sayra. When we have dismissed the appeal Nos.169 and 170 of 1988 of the adjoining village Sayra, then learned AGP., Mr.Gori was hardly in a position to assail the impugned judgment and award passed by the learned reference court because village Kuna was part and parcel of village Sayra itself.

In view of the above, First Appeal No.171 of 1988 fails and is hereby dismissed. However, there shall be no order as to costs as no one appears for the respondents though served. At this stage, it is brought to our notice that in all these matters stay was granted on separate Civil Applications filed in these appeals. Once the main appeals are dismissed, then stay granted earlier has to be vacated and accordingly it is vacated in all the matter.

(B.J.Shethna, J.)

(M.C.Patel, J.)

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